

TIM MARISSETTE)	
Claimant)	
VS.)	
)	Docket No. 250,086
HAYDEN TOWER SERVICE, INC.)	
Respondent)	
AND)	
)	
FREMONT COMPENSATION)	
Insurance Carrier)	

The Board's jurisdiction to review preliminary hearing findings is statutorily created by K.S.A. 44-534a. The statute provides that the Board may review those preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply. The Board also has jurisdiction to review preliminary hearing findings if it is alleged the administrative law judge exceeded the judge's jurisdiction. See K.S.A. 44-551.

In the instant case, the Administrative Law Judge denied claimant's request for medical treatment. The order specifically states that the reasons behind this denial are both that the accidental injury did not arise out of and in the course of claimant's employment and, in addition, that claimant failed to prove a need for additional medical treatment. The latter finding is not one of the jurisdictional issues listed in K.S.A. 44-534a and, therefore, is not reviewable at this stage of the proceedings. Conversely, the issue of whether claimant suffered an accidental injury that arose out of and in the course of his employment is jurisdictional. But because Judge Fuller also denied claimant's request for medical treatment on a basis which is not subject to the Board's review at this time, the jurisdictional issue is moot.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's appeal from the Amended Order Denying Medical Treatment of Administrative Law Judge Pamela J. Fuller, dated July 3, 2001, should be and is hereby dismissed.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

BOARD MEMBER

c: Robert A. Levy, Attorney for Claimant
Richard J. Liby, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director